Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

Nos. 86-1380 and 86-1424

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

ARKANSAS PUBLIC SERVICE COMMISSION, ET AL.,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ARKANSAS POWER & LIGHT COMPANY,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.,
Respondents.

**On Petitions For A Writ Of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit**

SUPPLEMENTAL BRIEF OF THE CITY OF NEW ORLEANS, LOUISIANA

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April 13, 1987

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SUPPLEMENTAL BRIEF OF THE CITY OF NEW ORLEANS, LOUISIANA

On March 11, 1987, the City of New Orleans, Louisiana ("New Orleans") filed a response to the Petitions for a Writ of Certiorari in the captioned

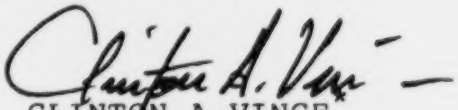
proceedings urging the Court to defer consideration of the petitions until the Court of Appeals for the District of Columbia Circuit had acted upon several pending petitions for rehearing, and suggestions for rehearing en banc, in connection with the same matter. The petitions before this Court and the petitions and suggestions before the Court of Appeals arise from the opinion of the lower court in Mississippi Industries v. FERC, 808 F.2d 1525 (D.C. Cir. 1987).

On April 3, 1987, the Court of Appeals ordered the case below to be reheard by the court sitting en banc, and directed that such rehearing would involve consideration of important substantive issues. The lower court's order is reproduced in Appendix A hereto.

Rule 20.4 of the Supreme Court's Rules provides that, where rehearing is granted, the time for filing a petition for a writ of certiorari "runs from the date of . . . the entry of a subsequent judgment entered on the rehearing." By the operation of this rule, the petitions now before the Court are premature. Accordingly, we suggest that the Court defer their disposition until final judgment is entered by the Court of Appeals. Since subsequent petitions for a writ of certiorari are expected to be filed, no useful purpose would be served by disposition of the instant petitions at this time. We also request that New Orleans be permitted to file a response to these petitions 30 days after final disposition by the Court of

Appeals, or other appropriate time as determined by the Court.

Respectfully submitted,



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April 13, 1987

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1611 September Term, 1986

Mississippi Industries

v. filed APR 3 1987

Federal Energy Regulatory Commission

And Consolidated Case Nos. 85-1613, 85-1615, 85-1616, 85-1617, 85-1618, 85-1619, 85-1620, 85-1621, 85-1623, 85-1624, 85-1626, 85-1637, 85-1640, 85-1647, 85-1712, 85-1719, 85-1772.

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams and D.H. Ginsburg, Circuit Judges

O R D E R

The suggestion for rehearing en banc of the City of New Orleans, Louisiana, the suggestion of Mississippi Industries, the Mississippi Attorney

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1611 September Term, 1986

General and the Mississippi Public Service Commission, and the suggestion of Mississippi Power and Light Company were circulated to the full court. The taking of a vote was requested. Thereafter, a majority of the judges of the court in regular active service voted in favor of the suggestions. Upon consideration of the foregoing, it is

ORDERED, by the Court en banc, that these cases will be reheard by the Court sitting en banc, such rehearing to be limited to the issues raised by the dissenting opinion of January 6, 1987. It is

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FURTHER ORDERED, by the Court en banc, that those parts of Section III(C)(2) of the opinion of January 6, 1987, which address the two issues raised in the dissenting opinion, specifically, pages 76 to the end of the first paragraph on page 80, and the judgment of the same date insofar as it concerns those issues, are hereby vacated. It is

FURTHER ORDERED, by the Court en banc, that briefs limited to the issues identified in the dissenting opinion of January 6, 1987 shall be filed in accord with the following schedule:

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1611 September Term, 1986

Petitioners' briefs
(limited to 15 pages) . May 29, 1987

Brief of respondent
(limited to 25 pages)
and briefs of
supporting
intervenors, if any
(limited to
10 pages) . . . . . July 30, 1987

The parties shall submit 30 copies of each brief filed. In light of the length of the briefing schedule, parties on the same side are expected to circulate drafts of their briefs and to file a joint brief, or briefs, or adopt briefs of other parties, wherever possible. The court looks with extreme disfavor upon numerous briefs presenting repetitive arguments.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1611 September Term, 1986

The parties are further directed to submit 30 additional copies of all briefs previously filed and 15 copies of the joint appendix by May 29, 1987.

The parties will be advised by future order of the date of argument before the en banc court. That date will be sometime after commencement of the court's 1987 term, on September 8, 1987.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

By:
Robert A. Bonner
Chief Deputy Clerk